



ORKNEY
ISLANDS COUNCIL

Item: 3

Local Review Body: 4 March 2025

**Proposed Conversion of Meeting Room to Two Self-catering Units,
Install Replacement Windows and Doors and Two Air Source Heat
Pumps with Housing (Resubmission of 23/313/PP) at 10 Bridge Street
Wynd, Kirkwall (23/465/PP).**

**Report by Corporate Director for Strategy, Performance and Business
Solutions.**

1. Overview

- 1.1. Planning application 23/465/PP in respect of the proposed conversion of a meeting room to two self-catering units and installation of replacement windows and doors and two air source heat pumps with housing (resubmission of 23/313/PP) at 10 Bridge Street Wynd, Kirkwall, was refused by the Appointed Officer on 22 August 2024.
- 1.2. Under the Town and Country Planning (Scotland) Act 1997 (the Act) and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (the Regulations), where an application for planning permission for local development has been determined by the Appointed Officer in accordance with the Council's Planning Scheme of Delegation, the applicant is entitled to seek a review of that decision by the Local Review Body.
- 1.3. The applicant has submitted a Notice of Review (see Appendix 1) requesting that the decision of the Appointed Officer, referred to at paragraph 1.1 above, be reviewed. The applicant has indicated that the review can be determined without any further procedures.
- 1.4. The matter was first considered by the Local Review Body on 13 December 2024, when the Committee determined it did not have sufficient information in order to proceed to determine the review and accordingly, resolved that the Review should not be determined without further procedure.

- 1.5. The Local Review Body determined that the further procedure should comprise further information by means of written submissions, as set out in Regulation 15 of the Regulations, from the applicant, with the undernoted parties named on the Procedure Notice, so that they might comment on the information provided by the applicant:
 - Orkney Islands Council's Engineering Services (Engineering Services)
 - Scottish Environment Protection Agency (SEPA).
- 1.6. The Local Review Body resolved that the further information should comprise clarification from the applicant as to the difference in height between the pavement level and internal floor level given the changes made to the Flood Risk Assessment submitted as part of the notice of review.
- 1.7. A Procedure Notice was issued to the applicant's agent on 28 January 2025 with a request that the further information be provided no later than 10 February 2025. No Procedure Notice Response has been received by the Local Review Body.
- 1.8. A letter from the Chief Planner, Scottish Government, issued in July 2011, confirmed that a review by a Local Review Body should be conducted by means of a full consideration of the application afresh.
- 1.9. Section 21 of the Scheme of Administration states that the Local Review Body will undertake unaccompanied site inspections for all planning applications subject to a review, prior to meeting to consider the review. The purpose of the site inspection, together with the procedure to be adopted, are set out in section 21.2 of the Scheme of Administration. An unaccompanied site inspection to 10 Bridge Street Wynd, Kirkwall, took place on 11 December 2024 at approximately 14:45.
- 1.10. SEPA has objected to application 23/465/PP on the grounds of flood risk. The application is, therefore, subject to an objection from a Government Agency and, in accordance with the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009, if the Local Review Body is minded to reverse the decision of the Appointed Officer then the Local Review Body must notify the Scottish Ministers. The Local Review Body must not grant planning permission before the expiry of a period of 28 days beginning with the day of notification. Further details are provided in section 6 below.
- 1.11. The review procedure is set out in section 4 below.

2. Recommendations

- 2.1. The Local Review Body is required to:
 - i. Determine whether it has sufficient information to proceed to determination of the review, and if so whether to uphold, vary or be minded to reverse the decision of the Appointed Officer.
- 2.2. Should the Local Review Body determine that the decision is varied or be minded to reverse the decision, it is required to:
 - i. Determine the reasons, and, if applicable, the relevant matters in respect of potential conditions to be attached to the decision notice.
- 2.3. Should the Local Review Body be minded to reverse the decision, the Local Review Body should notify the Scottish Ministers of its intention to approve planning permission, subject to conditions.
- 2.4. Should the review not be called in by Scottish Ministers for determination, it is recommended that members of the Local Review Body:
 - i. Delegate powers to the Corporate Director for Strategy, Performance and Business Solutions, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions to attach to the Decision Notice.
- 2.5. Should the Local Review Body determine that it does not have sufficient information to proceed to determination of the review, it is required to:
 - i. Determine what further information is required, which parties are to be requested to provide the information, and whether to obtain further information by one or more of the following methods:
 - By means of written submissions under the procedure set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013; and/or
 - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

3. Planning Authority Decision

- 3.1. The Planning Handling Report, Planning Services file and the Decision Notice are attached as Appendices 2, 3 and 4 to this report.
- 3.2. On 22 August 2024, the Appointed Officer refused planning application 23/465/PP on the following grounds:
 - The proposal does not comply with National Planning Framework 4 Policy 22 – Flood risk and water management as it may increase the risk of surface water flooding to others, or itself be at risk.
 - The proposal does not comply with Orkney Local Development Plan 2017 Policy 13 – Flood Risk, SuDS & Waste Water Drainage as would result in a situation where development would have a significant probability of being affected by flooding.

4. Local Review Procedure

- 4.1. In response to a Notice of Review, “interested parties” are permitted to make a representation to the Local Review Body. “Interested parties” include any party who has made, and not withdrawn, a representation in connection with the application. A representation was received from Orkney Heritage Society and is attached as Appendix 5.
- 4.2. In instances where a representation is received from an “interested party”, the applicant is afforded the opportunity to make comments on any representation received. No further comment was received from the applicant or the agent.
- 4.3. As outlined in section 1 above, on 13 December 2024, the Local Review Body resolved that it had insufficient information to determine the review and agreed that the further procedure should comprise further information by means of written submissions, as set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 4.4. On 28 January 2025, a Procedure Notice was issued to the applicant’s agent, attached as Appendix 6. The applicant’s agent was also advised that, in accordance with the Regulations, as well as submitting their Procedure Notice Response to the Local Review Body, they must send a copy to SEPA and Engineering Services. This was to be done no later than 10 February 2025. A Procedure Notice Response has not been received from the applicant’s agent.

- 4.5. The Local Review Body may uphold, vary or be minded to reverse the decision of the Appointed Officer. In the event that the Local Review Body is minded to reverse the decision, an indication of relevant matters, in respect of potential planning conditions, are as follows:
- Duration of consent.
 - Occupation as self-catering accommodation.
 - Air source heat pump noise.
 - Air source heat pump housing.
 - Replacement window and door specification.
 - Replacement window and door implementation.
- 4.6. All conditions should be in accordance with Planning Circular 4/1998 regarding the use of conditions in planning permissions.
- 4.7. If the Local Review Body is minded to reverse the decision of the Appointed Officer, and the Scottish Ministers do not call in the review for determination following the notification procedure set out in section 6, it is proposed that powers are delegated to the Corporate Director for Strategy, Performance and Business Solutions, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions, based on the relevant matters, agreed in terms of section 4.5 above.
- 4.8. If the Local Review Body is minded to reverse the decision of the Appointed Officer, then planning permission must not be granted until the notification procedure set out in section 6 has been undertaken.
- 4.9. If the Local Review Body decides that further procedure is required, it may decide to hold a pre-examination meeting to consider what procedures to follow in the review, or to obtain further information by one or more of the following methods:
- By means of written submissions under the procedure set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013; and/or.
 - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

5. Relevant Planning Policy and Guidance

- 5.1. Section 25 of the Act as amended states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise ... to be made in accordance with that plan...”
- 5.2. The full text of the Orkney Local Development Plan 2017 (OLDP 2017) and other supplementary planning advice and guidance can be read on the Council website [here](#). Although the Orkney Local Development Plan is “out-of-date” and has been since April 2022, it is still a significant material consideration when considering planning applications. The primacy of the plan should be maintained until a new plan is adopted. However, the weight to be attached to the Plan will be diminished where policies within the plan are subsequently superseded.
- 5.3. National Planning Framework 4 was approved by Parliament on 11 January 2023 and formally adopted by Scottish Ministers on 13 February 2023. The statutory development plan for Orkney consists of the National Planning Framework and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of National Planning Framework 4 and a provision of the Orkney Local Development Plan 2017, National Planning Framework 4 is to prevail as it was adopted later. It is important to note that National Planning Framework 4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in National Planning Framework 4 and can be used to guide decision-making.
- 5.4. It is for the Local Review Body to determine which policies are relevant to this application; however the policies listed below were referred to by the Appointed Officer in the Planning Handling Report:
 - Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 3 – Settlements, Town Centres and Primary Retail Frontages.
 - Policy 8 – Historic Environment and Cultural Heritage.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - National Planning Framework 4:
 - Policy 7 – Historic assets and places.
 - Policy 22 – Flood risk and water management.
 - Policy 27 – City, town, local and commercial centres.
 - Policy 30 – Tourism.

6. Notification Requirements

- 6.1. The development is subject to objection by a government agency, in this case an objection by SEPA in relation to flood risk.
- 6.2. Under the provisions of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009, should a planning authority, in this case the Local Review Body, propose to approve planning permission for a development falling within any of the descriptions of development listed in the Schedule to the above Direction (including where the application has been subject to objection from SEPA on grounds of flooding), the planning authority shall notify Scottish Ministers.
- 6.3. A planning authority must not approve planning permission for development before the expiry of a period of 28 days, beginning with the date of receipt by the Scottish Ministers of information which the planning authority is required to provide.

For Further Information please contact:

Susan Shearer, Planning Advisor to the Local Review Body, extension 2433, Email: susan.shearer@orkney.gov.uk.

Implications of Report

1. **Financial:** All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing revenue budgets.
2. **Legal:** The legal implications are set out in the body of the report.
3. **Corporate Governance:** In accordance with the Scheme of Administration, determination of Notices of Review is delegated to the Local Review Body.
4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** None.
7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
 - Growing our economy.
 - Strengthening our Communities.
 - Developing our Infrastructure.
 - Transforming our Council.

8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
- Cost of Living.
 - Sustainable Development.
 - Local Equality.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
11. **Procurement:** None.
12. **Health and Safety:** None.
13. **Property and Assets:** None.
14. **Information Technology:** None.
15. **Cost of Living:** None.

List of Background Papers

Orkney Local Development Plan 2017, available [here](#).

National Planning Framework 4, available [here](#).

Planning Circular 4/1988, available [here](#).

Appendices

Appendix 1 – Notice of Review (pages 1 – 27).

Appendix 2 – Planning Handling Report (pages 28 - 31).

Appendix 3 – Planning Services File (pages 32 - 61).

Appendix 4 – Decision Notice (pages 62 - 65).

Appendix 5 – Representation from Orkney Heritage Society (pages 66 - 68).

Appendix 6 – Procedure Notice (pages 69 – 71)

Pages 1 to 65 can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference”23/465/PP.”.

Hazel Flett

From: sjrosie <sjrosie@btinternet.com>
Sent: 30 September 2024 11:47
To: Hazel Flett
Subject: Re: Planning App 23/465/PP - 10 Bridge Street Wynd, Kirkwall - Notice of Review

-- External e-mail: **Think before you Click.**--

Orkney Heritage Society is disappointed that this application was refused due to the potential of flooding and consider the stance taken by SEPA and the planners to be over cautious. It also has worrying implications. Does this decision preclude any ground floor habitation in this area? To keep our town centres vibrant, its buildings need to be used and maintained. Converting this property to self catering units is a good use of this existing property.

The scale of flood risk being considered is only 300mm or so deep. Whilst this is damaging, the location of the site is not one of great risk such as on the edge of a harbour or where there is a risk of washed-in debris of any substance. The risk to the life of residents will be low if the area is flooded, further reduced by the fact that the property will be supervised by the applicants, who have access to any weather warnings. With Orkney's short watercourses any fluvial flooding is likely to be short-lived. Tidal flooding may be of longer duration, but that too is likely to be only hours in duration. The need to evacuate people in that period is therefore smaller than where a site could be cut off for days as floodwaters from up-catchment come through the site. Overall the risk seems small, short and manageable.

In terms of further reducing flood risk:

1. Ensure the heat pumps are sited above flood level to prevent damage.
2. There is reference to plasterboard finishes. It would be reasonable to only start these finishes above flood level and to hard plaster with resistant plaster below flood level, so ensuring no damage to wall finishes.
3. There is reference to electrical equipment being above flood level. This can be achieved by ensuring that all cables drop from the ceiling to high level outlets rather than coming up from under the floor.
4. The use of flood proof surfaces such as polished concrete floors with rugs, tiles or with vinyl rather than timber would be a sensible.

Regards

Spencer Rosie on behalf of Orkney Heritage Society

----- Original Message -----

From: Hazel.Flett@orkney.gov.uk

To: sjrosie@btinternet.com Cc: Hazel.Flett@orkney.gov.uk; Kate.Russell-Duff@orkney.gov.uk

Sent: Thursday, September 26th 2024, 12:48

Subject: Planning App 23/465/PP - 10 Bridge Street Wynd, Kirkwall - Notice of Review

Classification: NOT PROTECTIVELY MARKED

Planning App 12/465/PP

Applicant: The Old Storehouse Ltd

Proposal: Convert a meeting room to two self-catering units, install replacement windows and doors and two air source heat pumps with housing (resubmission of 23/313/PP)

Notice of Review

The above planning application was refused by the Appointed Officer on 22 August 2024.

The applicant's agent has submitted a Notice of Review in terms of section 43A(8) of the Town and Country Planning (Scotland) Act 1997, as amended.

In terms of Regulation 10(b) of the Town and Country (Schemes of Delegation and Local Review Procedures)(Scotland) Regulations 2013, as an interested party to the above application, I hereby notify you of the same.

Copies of any representations previously made with respect to the application will be considered by the Local Review Body when determining the review.

You may make further representations to the Local Review Body, which should be submitted to me, in writing, not later than **Tuesday, 8 October 2024**. In writing includes by e-mail. A copy of any representations provided will be sent to the applicant for comment.

A copy of the Notice of Review and other documents related to the review can be inspected by following the link below and inserting the reference number "23/465/PP":

[Application Search and Submission \(orkney.gov.uk\)](http://orkney.gov.uk)

Kind regards

Hazel Flett

Service Manager (Governance)

Strategy, Performance and Business Solutions | Orkney Islands Council

Council Offices | Kirkwall | Orkney | KW15 1NY

Telephone: 01856 873535 Extension 2208 | Direct Dial: 01856 886463

Kate Russell-Duff

From: Committees
Sent: 28 January 2025 14:14
To: Leslie Burgher
Cc: Hazel Flett; Kate Russell-Duff
Subject: Planning App 23.465.PP - 10 Bridge Street Wynd
Attachments: Regulation 15 Notice.docx

Classification: NOT PROTECTIVELY MARKED

Planning App 23/465/PP**Applicant: The Old Storehouse Ltd****Proposal: Convert a meeting room to two self-catering units, install replacement windows and doors and two air source heat pumps with housing (resubmission of 23/313/PP)****Notice of Review**

I refer to the Review of the above planning application and advise you that, at its meeting held on 13 December 2024, the Local Review Body resolved that the Review should not be determined without further procedure.

Accordingly, please find attached a Procedure Notice under Regulation 15 of The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, for your attention.

In accordance with the Regulations, as well as submitting your Procedure Notice Response to myself, you must send a copy to SEPA and Engineering Services, Orkney Islands Council – contact details are provided in the attached Procedure Notice.

This must be done no later than **10 February 2025**.

Kind regards

Katy Russell-Duff
Committees Officer
Strategy, Performance and Business Solutions
Orkney Islands Council
Council Offices, School Place, Kirkwall, Orkney, KW15 1NY
Telephone (01856) 873535 Extension 2239

Procedure Notice under Regulation 15 of The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

Planning Application 23/465/PP

Proposed Conversion of Meeting Room to Two Self-catering Units, Install Replacement Windows and Doors and Two Air Source Heat Pumps with Housing (Resubmission of 23/313/PP) at 10 Bridge Street Wynd, Kirkwall

I refer to the Review of the above planning application and advise you that, at its meeting held on 13 December 2024, the Local Review Body resolved that the Review should not be determined without further procedure.

The further procedure is to be provided by means of a written submission from:

The Old Storehouse Ltd, c/o Leslie Burgher, Seaview, Halley Road, Deerness, Orkney, KW17 2QL.

The written submission is in respect of the following:

The Local Review Body requests that the Applicant clarifies the difference in height between the pavement level and internal timber floor level given the changes made to the Flood Risk Assessment submitted as part of the Notice of Review.

For context, the Flood Risk Assessment (Dated "Rev B: September 2024") submitted as part of the Notice of Review states the difference as "300mm above pavement level" whereas the Flood Risk Assessment (Dated "April 2024") submitted as part of the planning application states the difference as "300mm above floor level".

Further representations in response to the above (known as "the procedure notice response") should be submitted to me in writing, no later than **10 February 2025**. In writing includes by e-mail.

The Local Review Body has determined that Scottish Environment Protection Agency ("SEPA") and Orkney Islands Council's Engineering Services ("Engineering Services") should be afforded the opportunity to make comment on the information provided by the Applicant and, as a result, you must also send a copy of your procedure notice response to SEPA and Engineering Services (see contact details below) no later than the date provided above.

Contact details:

Planning Unit (North Region) SEPA, Graesser House, Fodderty Way, Dingwall, IV15 9XB.
Email planning.north@sepa.org.uk

Engineering Services, Orkney Islands Council, School Place, Kirkwall, KW15 1NY. Email peter.woodward@orkney.gov.uk, sam.harris@orkney.gov.uk

SEPA and Engineering Services will have a period of 14 days upon receipt of the procedure notice response to give comments to the Local Review Body and provide you with copies of their comments.

Katy Russell-Duff
Clerk to the Local Review Body